

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,) CR-18-00258-EJD
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) JUNE 29, 2022
)
RAMESH "SUNNY" BALWANI,) VOLUME 43
)
DEFENDANT.) PAGES 7741 - 7747
)
_____)

TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
KELLY VOLKAR
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY

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TRANSCRIPT PRODUCED WITH COMPUTER
A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP
BY: MOLLY MCCAFFERTY
SHAWN ESTRADA
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405 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105

BY: JEFFREY COOPERSMITH
AARON BRECHER
AMANDA MCDOWELL
701 FIFTH AVENUE, SUITE 5600
SEATTLE, WASHINGTON 98104

BY: STEPHEN CAZARES
77 SOUTH FIGUEROA STREET, SUITE 3200
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BY: AMY WALSH
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ALSO PRESENT:

OFFICE OF THE U.S. ATTORNEY
BY: MADDI WACHS, PARALEGAL
SARA SLATTERY, PARALEGAL

ORRICK, HERRINGTON & SUTCLIFFE
JENNIFER CYGNOR, PARALEGAL

PROLUMINA
BY: COREY ALLEN
2200 SIXTH AVENUE, SUITE 425
SEATTLE, WASHINGTON 98121

UNITED STATES POSTAL INSPECTION SERVICE
BY: CHRISTOPHER MCCOLLOM

FEDERAL BUREAU OF INVESTIGATION
BY: MARIO C. SCUSSEL

UNITED STATES FOOD & DRUG
ADMINISTRATION
BY: GEORGE SCAVDIS

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1 SAN JOSE, CALIFORNIA

JUNE 29, 2022

2 P R O C E E D I N G S

3 (THE FOLLOWING PROCEEDINGS CONVENED OUTSIDE THE PRESENCE
4 OF THE JURY AT 9:21 A.M.)

5 THE COURT: THANK YOU. PLEASE BE SEATED.

6 AND WE ARE ON THE RECORD IN THE BALWANI MATTER. COUNSEL
7 ARE PRESENT. MR. BALWANI IS PRESENT. THE JURY IS
8 DELIBERATING.

9 WE DID RECEIVE A NOTE FROM THE JURY, AND I WILL ASK OUR
10 COURTROOM DEPUTY TO HAND THAT NOTE TO COUNSEL. WE HAVE MADE
11 COPIES FOR YOU, AND I WILL READ THE NOTE.

12 IT IS DATED TODAY'S DATE, 8:15 A.M., NOTE NUMBER 3. THE
13 JURY HAS THE FOLLOWING QUESTION: "TRIAL EXHIBIT 5441 SAYS IT
14 SHOULD BE AVAILABLE IN NATIVE FORMAT AS THERANOS_V12.XLSX*, BUT
15 WE DO NOT SEE IT. IS THIS AVAILABLE?"

16 WE ARE GOING TO PULL UP WHAT WE HAVE, I THINK, AND SEE IF
17 WE CAN DISPLAY THAT, OR IF COUNSEL HAVE AVAILABILITY TO DO
18 THAT, MAYBE THAT WOULD ASSIST US ALL.

19 AND I BELIEVE 5441 IS ON DISPLAY. AND IF WE SCROLL DOWN,
20 THERE'S THE -- THE FIRST PAGE THERE IS THE DOCUMENT AVAILABLE
21 PAGE, AND THEN THERE ARE SEVERAL OTHER, IT LOOKS LIKE
22 SPREADSHEETS. I ASSUME THIS IS WHAT THEY ARE TALKING ABOUT.
23 I'M HAPPY TO HEAR FROM COUNSEL.

24 MR. SCHENK: YES, YOUR HONOR. THAT IS CORRECT.

25 WHAT THE COURT IS LOOKING AT ON ITS SCREEN IS AN EXHIBIT

1 THAT WAS ADMITTED BY THE GOVERNMENT ON MAY 18TH THROUGH
2 BRIAN GROSSMAN. THE EXHIBIT CONSISTS OF, THE FIRST PAGE IS AN
3 E-MAIL, AND THEN THE NEXT GROUP OF PAGES, I CAN GET THE EXACT
4 NUMBER FOR THE COURT, ABOUT 50 OR SO PAGES, ARE THE ATTACHMENT
5 THAT THE NOTE REFERS TO.

6 THE GOVERNMENT ADMITTED THE EXHIBIT, INCLUDING THE
7 ATTACHMENT, THROUGH BRIAN GROSSMAN. I BELIEVE THE PDF VERSION
8 IS WHAT WAS ADMITTED. SO I'M NOT SURPRISED TO HEAR THE JURY
9 CHECKING THE THUMB DRIVE AND NOT FINDING THIS EXHIBIT. AND I
10 THINK EVEN IN THE NOTE, IT REFERENCES PAGE 2 OF THIS DOCUMENT,
11 IF -- MS. WACH, IF YOU COULD GO TO PAGE 2.

12 SO THE COURT WILL SEE THE DOCUMENT ITSELF SAYS "DOCUMENT
13 AVAILABLE IN NATIVE FORMAT." AND I THINK THAT'S A PHRASE THAT
14 WE SEE IN THE JURY'S NOTE.

15 SO THE JURY, APPARENTLY, APPEARS TO BE LOOKING AT THIS
16 DOCUMENT, SEEING THAT REFERENCE, WHICH IS SOMETHING, AS I
17 UNDERSTAND IT, THAT GETS PRODUCED IN THE PRODUCTION OF
18 DISCOVERY PHASE, NOT A STATEMENT TO THE FORMAT OF THE EVIDENCE
19 IN THIS TRIAL.

20 SO THE JURY HAS THIS DOCUMENT, THEY HAVE BOTH THE E-MAIL
21 AND THE ATTACHMENT. AND AT TRANSCRIPT, PAGE 6122, MR. LEACH
22 OFFERS THE EXHIBIT, WITH NO OBJECTION, AND THEN HAS A
23 DISCUSSION WITH MR. GROSSMAN ABOUT A PARTICULAR PAGE IN THE
24 PDF.

25 THE COURT: ALL RIGHT. THANK YOU.

1 MR. COOPERSMITH: I HAVE A LITTLE MORE INFORMATION
2 FOR THE COURT.

3 I DON'T DISAGREE WITH WHAT MR. SCHENK SAID, BUT THERE IS
4 ANOTHER EXHIBIT, IT'S NUMBER 4098, AND I BELIEVE THAT IS THE
5 NATIVE VERSION THAT WAS ADMITTED INTO EVIDENCE.

6 THE COURT: LET'S LOOK AT THAT. IF WE CAN PULL THAT
7 UP.

8 MR. COOPERSMITH: YES, YOUR HONOR.
9 YOUR HONOR, I'M JUST CHECKING TO VERIFY THIS.

10 THE COURT: I DON'T SEE AN ADMITTED 4098.

11 MR. COOPERSMITH: WE ARE TRYING TO CONFIRM,
12 YOUR HONOR. THANK YOU.

13 YOUR HONOR, COULD WE HAVE A FEW MINUTES? WE NEED TO
14 VERIFY A FEW THINGS, INCLUDING THE TRANSCRIPT.

15 THE COURT: SURE, GO RIGHT AHEAD. SURE.

16 MR. COOPERSMITH: WE JUST WANT TO GET IT RIGHT,
17 YOUR HONOR. THANK YOU.

18 (PAUSE IN PROCEEDINGS.)

19 MR. COOPERSMITH: YOUR HONOR, THANK YOU FOR THE
20 COURT'S INDULGENCE.

21 I HAD THE WRONG NUMBER. IT'S ACTUALLY 4093. AND WE
22 VERIFIED WITH THE TRANSCRIPT AND THE EXHIBITS WITH THE
23 GOVERNMENT AS WELL, THAT THAT IS THE NATIVE VERSION.

24 THE COURT: OKAY. THANK YOU.

25 SHOULD WE -- SHOULD THE RESPONSE, THE ANSWER TO THE JURY'S

1 QUESTION, THEN BE, SEE EXHIBIT 4093?

2 MR. COOPERSMITH: THAT SEEMS PREFERABLE TO HAVING
3 THEM HUNT, YOUR HONOR.

4 I'M ALSO TOLD, YOUR HONOR, THEY DO HAVE THAT ON THE FLASH
5 DRIVE THAT WAS PROVIDED TO THEM. OUR PARALEGAL CONFIRMED THAT.
6 SO THAT SEEMS LIKE AN APPROPRIATE ANSWER, YES.

7 THE COURT: MR. SCHENK?

8 MR. SCHENK: I AGREE.

9 THE JURY'S QUESTION IS, "IS THIS AVAILABLE?" AND THIS
10 REFERS TO THE NATIVE FORMAT OF THIS TRIAL EXHIBIT, AND I THINK
11 IT'S APPROPRIATE TO SAY, IT'S AVAILABLE AT 4093.

12 THE COURT: RATHER THAN SAYING "YES."

13 MR. SCHENK: RIGHT.

14 THE COURT: ALL RIGHT. WELL, LET'S DO THAT THEN.

15 IF WE COULD WORDSMITH SOMETHING. SHOULD WE SAY, "PLEASE
16 SEE EXHIBIT 4093," WHAT WOULD YOU LIKE TO --

17 MR. SCHENK: THAT WOULD BE FINE, YOUR HONOR.

18 MR. COOPERSMITH: YEAH, THAT'S GREAT.

19 THE COURT: OKAY. WE WILL TYPE THAT UP.

20 (PAUSE IN PROCEEDINGS.)

21 THE COURT: ALL RIGHT. LET ME SHOW YOU WHAT WE HAVE
22 PRINTED AND WHAT YOU WILL SIGN, WITH YOUR APPROVAL.

23 MR. COOPERSMITH: YES, YOUR HONOR.

24 MR. SCHENK: YES.

25 THE COURT: OKAY. COULD I GET THAT BACK?

1 THE CLERK: I WILL GIVE YOU GUYS A SIGNED ONE.

2 THE COURT: I WILL SIGN THIS AND THEN WE WILL MAKE
3 COPIES FOR EACH SIDE.

4 MR. COOPERSMITH: THANK YOU, YOUR HONOR.

5 (PAUSE IN PROCEEDINGS.)

6 THE COURT: ALL RIGHT.

7 SO THE ANSWER WILL BE, "YES, PLEASE SEE EXHIBIT 4093."

8 GREAT. THANK YOU. WE WILL MAKE COPIES OF THAT. I WILL
9 GIVE THAT TO THE JURY, AND WE WILL SEE YOU SOON.

10 MR. COOPERSMITH: YES. THANK YOU.

11 THE COURT: ALL RIGHT. THANK YOU.

12 (THE PROCEEDINGS WERE CONCLUDED AT 9:35 A.M.)

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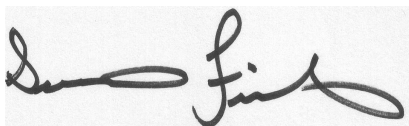
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 6/29/22